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## **Laborer wins Supreme Court appeal of worker's compensation denial**

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For John Kovacs, what the courts called a day late almost left him thousands of dollars short.

The union-represented sheet metal worker ruptured a vertebrae in his back on Sept. 29, 2010, at a job site in north Spokane, according to a medical claim he filed Sept. 29, 2011. Those dates became important in a legal case that took six years and the involvement of the state's highest court to resolve.

A unanimous Washington Supreme Court ruled last month in Kovacs' favor, after a lower court ruling and the Washington Department of Labor and Industries had found the claim for benefits was made a year and a day after the injury, surpassing the one-year statute of limitations. The Supreme Court's reversal means Kovacs won't have to pay back thousands of dollars in benefits he'd already received as a result of conflicting opinions in the case.

"It would have been difficult to pay that back," said Kovacs, who lives in Post Falls and has been out of work since January due to ongoing pain from a series of surgeries dating back to the injury. "I would have been in a really hard place."

Kovacs' attorney, Tod Doran, said the case is unique because most people file quickly after their injuries.

"I've been doing this 36 years, and I know of no one who I'm familiar with in the field who's had this issue come up," he said.

State law requires a claim for workplace injury compensation to be "filed within one year after the day upon which the injury occurred." The Department of Labor and Industries and Kovacs' former employer, Pro Heating & Air Condition Inc., said the statute should be read to include the date of the injury. Doran argued every other area of the law uses the injury date as an anniversary, with the clock starting to tick the next day.

Pro Heating & Air Conditioning Inc. is now doing business under the name Pro Mechanical Services Inc. after a sale. The business disputes that Kovacs' injury occurred on the job and says there are witnesses who would dispute his story about the injury.

But that issue wasn't raised in the courtroom, and Kovacs said the rupture occurred just as he was breaking frosty ground with a pickaxe on an addition to the company's building near Rogers High School.

"I swung, and I wound up picking myself off the ground. It just, it went out," Kovacs said.

Kovacs didn't go to the doctor right away, he said, for fear of losing the job he'd held for 12 years. He began working fewer and fewer hours and eventually sought medical attention. Surgeons performed a laminectomy, a procedure where part of the vertebrae is removed to relieve pressure, Kovacs said.

The doctor didn't prohibit him from any duties when he returned to work in the spring of 2011, Kovacs said, instead urging him to listen to his body. Kovacs attempted to work but the pain was too intense, he said, leading him to brushing his teeth on his knees because he couldn't stand straight. He left work in April 2011, and a fight over unemployment benefits ensued. He filed the claim for coverage of his medical bills at the end of that summer.

James Mills, the attorney representing the Department of Labor and Industries before the Supreme Court, argued the word "after" in the statute should be read as "from." Justice Debra Stephens said that interpretation didn't make sense to her.

"I was just thinking, 'I ran from the bear, I ran after the bear,' those seem like two really different things," Stephens said, prompting some laughter in the courtroom.

"My point was the courts have read 'after' and 'from' as synonymous, and then, it starts from the time of the triggering event, it starts on that day, and runs from that day forward," Mills responded.

Writing for a unanimous court, Justice Steven C. Gonzalez rejected that argument.

"We hold that the statute of limitations on filing workers' compensation claims begins to run on the date following injury," Gonzalez wrote. The decision is now the definitive ruling on the sunset for filing a claim in Washington, throwing out language in a 1941 Supreme Court decision that seemed to conflict with a plain reading of the law.

In that case, *Andrew Nelson v. Department of Labor and Industries*, Justice George B. Simpson wrote "the one year period in which the claim must be filed commences to run on the day of the accident." A forester filed a claim with the department after his ankle was broken by a felled tree in 1933. But Nelson filed his claim 11 days after the injury, according to the court record, and the timing of the claim was not a factor in the Supreme Court's decision in that case.

Subsequent opinions of the court supported Kovacs' position. Judge George Fearing wrote in his dissent of the appellate court's decision, handed down in July 2015, that it's also the position that would make the most sense to workers filing claims.

“Washingtonians do not think in such terms. September 29, 2011, is one year after September 29, 2010, not a year and a day,” Fearing wrote. “If it were otherwise, a Washingtonian born on December 16 would celebrate her birthday on December 15.”

Kovacs said this week he was relieved by the court’s decision, which has caused strain in his family and uncertainty about his financial future. He plans to complete an independent medical exam through the Department of Labor and Industries later this month, which will show what work he is capable of performing. But he said his days as a welder and sheet metal worker are likely over.

“I don’t know what I want to do,” Kovacs said. “Maybe something in health and safety in the workplace.”